

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENNIS THOMAS,

Petitioner,

v.

Case No. 06-CV-15465-DT
Honorable John Corbett O'Meara

HUGH WOLFENBARGER,

Respondent.

ORDER DENYING PETITIONER'S MOTION FOR
(1) A CERTIFICATE OF APPEALABILITY AND
(2) FOR LEAVE TO PROCEED ON APPEAL *IN FORMA PAUPERIS*

On May 28, 2008, Petitioner filed a notice of appeal of this Court's May 5, 2008 judgment and order denying his petition for writ of habeas corpus, which was filed pursuant to 28 U.S.C. § 2254. In response to Petitioner's notice of appeal, this Court must determine whether to issue a certificate of appealability.

In a habeas corpus proceeding in which the detention complained of arises from process issued by a state court, or in a 28 U.S.C. § 2255 proceeding, the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of appealability under 28 U.S.C. § 2253(c). If an applicant files a notice of appeal, the district judge who rendered the judgment must either issue a certificate of appealability or state why a certificate should not issue. Fed. R.App. P. 22(b). The court may issue a certificate of appealability if the petitioner has made a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). "[T]he petitioner need not show that he should prevail on the merits. He has already failed in

that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that the court could resolve the issues [in a different manner] or that the questions are ‘adequate to deserve encouragement to proceed further.’” *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4 (1983); *Hence v. Smith*, 49 F.Supp.2d 547, 549 (E.D.Mich.1999).

Here, the Court finds that Petitioner has not made a substantial showing of the denial of a constitutional right. The issues raised in the petition are not debatable among jurists of reason, such that they could be resolved differently, and they are not “adequate to deserve encouragement to proceed further.” *Barefoot*, 463 U.S. at 893 n. 4. Accordingly, the request for a certificate of appealability and for leave to proceed on appeal *in forma pauperis* are DENIED.

SO ORDERED.

s/John Corbett O’Meara
United States District Judge

Date: June 2, 2008

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, June 2, 2008, by electronic and/or ordinary mail.

s/William Barkholz
Case Manager